



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2013-0024; FRL 9927-29-OAR]

California State Nonroad Engine Pollution Control Standards; Amendments to Spark Ignition Marine Engine and Boat Regulations; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision.

SUMMARY: The Environmental Protection Agency (EPA) is granting the California Air Resources Board (CARB) request for authorization of California's amendments to its Spark Ignition Marine Engine and Boat regulations (2008 amendments). EPA's decision also confirms that certain of the 2008 amendments are within the scope of prior EPA authorizations. The 2008 amendments apply to spark ignition marine outboard motors, personal watercraft, and stern drive and inboard engines subject to California emissions regulations. This decision is issued under the authority of the Clean Air Act (CAA or Act).

DATES: Petitions for review must be filed by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this Notice of Decision under Docket ID EPA-HQ-OAR-2013-0024. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW, Washington, DC. The Public Reading Room is open

from 8:30 a.m. to 4:30 p.m.; Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744. The Air and Radiation Docket and Information Center's website is <http://www.epa.gov/oar/docket.html>. The email address for the Air and Radiation Docket is: a-and-r-Docket@epa.gov, the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the www.regulations.gov website, enter EPA-HQ-OAR-2013-0024 in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information ("CBI") or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality ("OTAQ") maintains a webpage that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver *Federal Register* notices, some of which are cited in today's notice; the page can be accessed at <http://www.epa.gov/otaq/cafr.htm>.

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SUPPLEMENTARY INFORMATION:

I. Background

By letter dated November 30, 2012, CARB submitted a request to EPA for authorization of amendments to the California Spark Ignition (SI) Marine Engine and Boat regulations¹

¹ 13 California Code of Regulations (CCR), sections 2111, 2112, Appendix A therein, 2139, 2147, 2440, 2441, 2442, 2443.1, 2443.2, 2443.3, 2444.1, 2444.2, 2445.1, 2445.2, 2447, 2474 and 2448.

(Marine SI regulations) pursuant to section 209(e) of the CAA (2008 amendments).² The 2008 amendments were adopted by CARB on June 24, 2008, and became operative state law on August 19, 2009.³ The 2008 amendments update and clarify regulations California adopted in 1998, 2001, and 2006.⁴ CARB refers to these regulations collectively as the Marine Spark Ignition Engine regulations (Marine SI regulations).

California's 1998 regulation established exhaust emission standards for outboard engines and personal watercraft. The 1998 regulation also established an accelerated implementation schedule such that California's marine spark ignition standards would take effect in 2001, compared to a 2006 effective date for federal marine SI standards. CARB adopted emission standards for inboard and stern drive engines in 2001 and amended the regulation in 2006 to provide industry with additional flexibility for complying with the exhaust standards.

The 2008 amendments considered here address technical issues that CARB identified as developing between 2006 and 2008, make clarifications and correct cross-referencing errors among CARB marine SI provisions, modify or change emission standards and options, and enhance alignment between the Marine SI regulations and other CARB and EPA regulations.

A. California's Authorization Request

The 2008 amendments establish new standards relating to the control of emissions from marine SI products, clarify procedures, add new flexibility for marine manufacturers, and/or correct outdated references in the California regulations. The 2008 amendments package also includes provisions that CARB deems not preempted by the Act and that do not require EPA

² "Clean Air Act section 209(e)(2) Authorization Support Document submitted by the California Air Resources Board, November 30, 2012," at EPA-HQ-OAR-2013-0024-0006 (Authorization Support Document).

³ EPA-HQ-OAR-2013-0024-0003.

⁴ In 2007 EPA granted California authorization to enforce CARB's marine spark ignition engine regulations for outboard/personal watercraft (OB/PWC) engines and Tier 1 of the California inboard/stern drive (IB/SD) marine emission standards, *see* 72 FR 14546 (March 28, 2007). In 2011 EPA granted California authorization to enforce CARB's second tier (Tier II) standards for spark ignited inboard and stern drive marine engines, *see* 76 FR 24872 (May 3, 2011).

authorization. Those amendments are not part of California's authorization request and are not included in this discussion.⁵

California requested EPA perform two types of review. First, CARB requested an EPA determination that certain provisions of the 2008 amendments are within the scope of the prior authorizations, or in the alternative, merit full authorization. These provisions include: (1) An update to California's aftermarket exemption procedures to fix a cross-referencing error that resulted when CARB adopted new stern drive/inboard (SD/I) engine standards in 2001; (2) The addition of a new tier of voluntary emission standards; (3) The addition of three new test cycle options for certification of high performance engines; (4) A new option enabling use of portable emission testing systems for certification testing of high performance SD/I engines produced in very low volumes; (5) A change allowing optional use of assigned deterioration factors for high performance engines; (6) New optional engine discontinuation allowances for manufacturers of SD/I engines; (7) New hardship relief and compliance assistance petition processes; (8) Revised requirements for marine on-board diagnostics systems; (9) New replacement engine flexibility; and (10) Modification to exhaust standards for high performance SD/I engines.⁶

Second, CARB requested full authorization for amendments that revise standards or establish new requirements. These provisions include: (1) Revised total hydrocarbon plus oxides of nitrogen (HC + NO_x) emission standards; (2) Enhanced evaporative emission controls for high performance SD/I engines; (3) Not-to-exceed limits for most marine SI engine categories; (4) Revised jet boat engine standards; and (5) New carbon monoxide emission standards.⁷

B. Clean Air Act Nonroad Engine and Vehicle Authorizations

⁵ Authorization Support Document at 4. EPA takes no position as to whether such provisions are subject to preemption in section 209(a) of the Act.

⁶ Authorization Support Document at 3.

⁷ Authorization Support Document at 3.

Section 209(e)(1) of the Act permanently preempts any state, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.⁸ For all other nonroad engines, states generally are preempted from adopting and enforcing standards and other requirements relating to the control of emissions. Section 209(e)(2), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. However, EPA shall not grant such authorization if it finds that: (1) The determination of California is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with [CAA section 209].⁹

On July 20, 1994, EPA promulgated a rule interpreting the three criteria set forth in section 209(e)(2)(A) that EPA must consider before granting any California authorization request for nonroad engine or vehicle emission standards.¹⁰ EPA revised these regulations in

⁸ States are expressly preempted from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from new nonroad engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. Such express preemption under section 209(e)(1) of the Act also applies to new locomotives or new engines used in locomotives. CAA section 209(e)(1), 42 U.S.C. 7543(e)(1)(A).

⁹ EPA's review of California regulations under section 209 is not a broad review of the reasonableness of the regulations or its compatibility with all other laws. Sections 209(b) and 209(e) of the Clean Air Act limit EPA's authority to deny California requests for waivers and authorizations to the three criteria listed therein. As a result, EPA has consistently refrained from denying California's requests for waivers and authorizations based on any other criteria. In instances where the U.S. Court of Appeals has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the Court has upheld and agreed with EPA's determination. *See Motor and Equipment Manufacturers Ass'n v. Nichols*, 142 F.3d 449, 462–63, 466–67 (D.C. Cir.1998), *Motor and Equipment Manufacturers Ass'n v. EPA*, 627 F.2d 1095, 1111, 1114–20 (D.C. Cir. 1979). *See also* 78 FR 58090, 58120 (September 20, 2013).

¹⁰ *See* "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards," 59 FR 36969 (July 20, 1994).

1997.¹¹ As stated in the preamble to the 1994 rule, EPA historically has interpreted the consistency inquiry under the third criterion, outlined above and set forth in section 209(e)(2)(A)(iii), to require, at minimum, that California standards and enforcement procedures be consistent with sections 209(a), 209(e)(1), and 209(b)(1)(C) of the Act.¹²

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests under section 209(b)(1)(C). That provision provides that the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures will be found to be inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology, giving appropriate consideration to the cost of compliance within that time,¹³ or (2) the federal and state testing procedures impose inconsistent certification requirements.¹⁴

In light of the similar language in sections 209(b) and 209(e)(2)(A), EPA has reviewed California's requests for authorization of nonroad vehicle or engine standards under section

¹¹ See "Control of Air Pollution: Emission Standards for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts; Preemption of State Regulation for Nonroad Engine and Vehicle Standards; Amendments to Rules," 62 FR 67733 (December 30, 1997). The applicable regulations are now found in 40 CFR part 1074, subpart B, section 1074.105.

¹² 59 FR 36969 (July 20, 1994). EPA has interpreted 209(b)(1)(C) in the context of section 209(b) motor vehicle waivers.

¹³ H. Rep. No. 728, 90th Cong., 1st Sess. 21 (1967)

¹⁴ S. Rep. No. 403, 90th Cong., 1st Sess. 32 (1967)

209(e)(2)(A) using the same principles that it has historically applied in reviewing requests for waivers of preemption for new motor vehicle or new motor vehicle engine standards under section 209(b).¹⁵ These principles include, among other things, that EPA should limit its inquiry to the three specific authorization criteria identified in section 209(e)(2)(A),¹⁶ and that EPA should give substantial deference to the policy judgments California has made in adopting its regulations. In previous waiver decisions, EPA has stated that Congress intended EPA's review of California's decision-making be narrow. EPA has rejected arguments that are not specified in the statute as grounds for denying a waiver: The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in California air quality not commensurate with its costs or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.¹⁷

This principle of narrow EPA review has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit.¹⁸ Thus, EPA's consideration of all the evidence submitted

¹⁵ See *Engine Manufacturers Association v. EPA*, 88 F.3d 1075, 1087 (D.C. Cir. 1996): "... EPA was within the bounds of permissible construction in analogizing §209(e) on nonroad sources to §209(a) on motor vehicles."

¹⁶ See EPA's Final 209(e) rulemaking at 59 FR 36969, 36983 (July 20, 1994).

¹⁷ "Waiver of Application of Clean Air Act to California State Standards," 36 FR 17458 (Aug. 31, 1971). Note that the more stringent standard expressed here, in 1971, was superseded by the 1977 amendments to section 209, which established that California must determine that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. In the 1990 amendments to section 209, Congress established section 209(e) and similar language in section 209(e)(1)(i) pertaining to California's nonroad emission standards which California must determine to be, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

¹⁸ See, e.g., *Motor and Equip. Mfrs Assoc. v. EPA*, 627 F.2d 1095 (D.C. Cir. 1979) ("*MEMA I*").

concerning an authorization decision is circumscribed by its relevance to those questions that may be considered under section 209(e)(2)(A).

C. Within-the-Scope Determinations

If California amends regulations that have been previously authorized by EPA, California may ask EPA to determine that the amendments are within the scope of the earlier authorization. A within-the-scope determination for such amendments is permissible without a full authorization review if three conditions are met. First, the amended regulations must not undermine California's previous determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 209 of the Act, following the same criteria discussed above in the context of full authorizations. Third, the amended regulations must not raise any new issues affecting EPA's prior waiver or authorization decisions.¹⁹

D. Deference to California

In previous waiver decisions, EPA has recognized that the intent of Congress in creating a limited review based on the section 209(b)(1) criteria was to ensure that the federal government did not second-guess state policy choices. As the agency explained in one prior waiver decision:

It is worth noting * * * I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator. The whole approach of the Clean Air Act is to force the development of new types of emission control technology where that is needed by compelling the industry to "catch up" to some degree with newly promulgated standards. Such an approach * * * may be attended with costs, in the shape of reduced product offering, or price or fuel economy penalties, and by risks that a wider number of vehicle classes may not be able to complete their development work in time. Since a balancing of these risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe I am

¹⁹ See "California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waiver of Federal Preemption," 46 FR 36742 (July 15, 1981).

required to give very substantial deference to California's judgments on this score.²⁰

Similarly, EPA has stated that the text, structure, and history of the California waiver provision clearly indicate both a congressional intent and appropriate EPA practice of leaving the decision on "ambiguous and controversial matters of public policy" to California's judgment.²¹ This interpretation is supported by relevant discussion in the House Committee Report for the 1977 amendments to the Clean Air Act.²² Congress had the opportunity through the 1977 amendments to restrict the preexisting waiver provision, but elected instead to expand California's flexibility to adopt a complete program of motor vehicle emission controls. The report explains that the amendment is intended to ratify and strengthen the preexisting California waiver provision and to affirm the underlying intent of that provision, that is, to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.²³

E. Burden and Standard of Proof

As the U.S. Court of Appeals for the D.C. Circuit has made clear in *MEMA I*, opponents of a California waiver request bear the burden of showing that the statutory criteria for a denial of the request have been met:

[T]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.²⁴

²⁰ 40 FR 23102, 23103-23104 (May 28, 1975).

²¹ *Id.* at 23104; 58 FR 4166 (January 13, 1993).

²² *MEMA I*, 627 F.2d at 1110 (*citing* H.R. Rep. No. 294, 95th Cong., 1st Sess. 301-302 (1977)).

²³ *Id.*

²⁴ *MEMA I*, at 1121.

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: "here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.'"²⁵ Therefore, the Administrator's burden is to act "reasonably."²⁶

With regard to the standard of proof, the court in *MEMA I* explained that the Administrator's role in a section 209 proceeding is to:

[...]consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.²⁷

In that decision, the court considered the standards of proof under section 209 for the two findings related to granting a waiver for an "accompanying enforcement procedure." Those findings involve: (1) Whether the enforcement procedures impact California's prior protectiveness determination for the associated standards, and (2) whether the procedures are consistent with section 202(a). The principles set forth by the court, however, are similarly applicable to an EPA review of a request for a waiver of preemption for a standard. The court instructed that "the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision."²⁸

With regard to the protectiveness finding, the court upheld the Administrator's position that, to deny a waiver, there must be "clear and compelling evidence" to show that proposed

²⁵ *Id.* at 1126.

²⁶ *Id.* at 1126.

²⁷ *Id.* at 1122.

²⁸ *Id.*

enforcement procedures undermine the protectiveness of California's standards.²⁹ The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.³⁰

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider what the standards of proof would be under section 209 concerning a waiver request for "standards," as compared to a waiver request for accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: "[E]ven in the two areas concededly reserved for Federal judgment by this legislation – the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible – Congress intended that the standards of EPA review of the State decision to be a narrow one."³¹

F. EPA's Administrative Process in Consideration of California's Request for Authorization of the 2008 Amendments

The CAA directs EPA to offer an opportunity for public hearing on authorization requests from California. On August 19, 2013, EPA published a *Federal Register* notice announcing an opportunity for written comment and offering a public hearing on California's

²⁹ *Id.*

³⁰ *Id.*

³¹ See, e.g., "California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption," 40 FR 23102 (May 28, 1975), at 23103.

request for authorization of the 2008 amendments.³² The request for comments specifically included, but was not limited to, the following issues.

First, EPA requested comment on whether the 2008 amendments for which CARB requested a within-the-scope determination should be considered under a within-the-scope analysis. We specifically requested comment on whether those amendments, each individually assessed, (1) undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards, (2) affect the consistency of California's requirement with section 209 of the Act, or (3) raise any other new issue affecting EPA's previous authorization determinations.

Second, EPA requested comment on whether those amendments would satisfy the criteria for full authorization if they do not meet the criteria for within-the-scope analysis.

Third, EPA sought comment on whether the amendments establishing new emission standards for which CARB requested full authorization satisfy the full authorization criteria. We specifically requested comment on whether: (1) California's protectiveness determination for these amendments (i.e., that California standards will be, in the aggregate, as protective of public health and welfare as applicable federal standards) is arbitrary and capricious, (2) California does not need such standards to meet compelling and extraordinary conditions, or (3) the California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

EPA received no written comments in response to its request, and received no request for a public hearing. Consequently, EPA did not hold a public hearing.

II. Discussion

A. Within-the-Scope Analysis

³² 78 FR 50412 (August 19, 2013).

CARB's request sought confirmation that 10 of the 2008 amendments fall within the scope of prior marine SI authorizations. EPA can confirm that amended regulations are within the scope of previously granted authorizations if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect the consistency of the Marine SI regulations with section 209. Third, the amendments must not raise any "new issues" affecting the prior authorization. If EPA determines that the amendments do not meet the requirements for a within-the-scope confirmation, we then consider whether the amendments satisfy the criteria for full authorization.

As described previously, EPA specifically invited comment on the appropriateness of California's request for within-the-scope versus full authorization treatment for 10 of the 2008 amendments. We received no comment on this issue.

We conducted our analysis by evaluating each of the 10 amendments against each within-the-scope criterion. The discussion below briefly summarizes the amendments and then presents our analysis. To avoid repetition, we present a single explanation when the same analysis and evaluation applies to multiple amendments, due to their similarity in design or impact. The amendments fall into three broad categories: (1) Changes that correct errors or clarify the existing regulation; (2) changes that add new compliance flexibility for marine SI manufacturers; and (3) changes that modify or adjust emission standards or requirements.

1. Amendments that correct errors or clarify the existing regulation

Two amendments fall into this first category. The Aftermarket Exemption Procedures Clarification Amendment (aftermarket exemptions amendment) corrects a cross-referencing error for SD/I parts manufacturers. When California adopted emission standards for SD/I engines

in 2001, a corresponding adjustment to the aftermarket exemption procedures did not occur. The 2008 amendments correct this error by removing the exclusion of eligibility for an aftermarket exemption for SD/I parts. The change thus aligns provisions covering emission standards, aftermarket exemptions, and exemption applicability for SD/I engines.

The Replacement Engine Provisions Amendment (replacement engines amendment) addresses a practical problem that resulted from California's previous requirement that new SD/I replacement engines comply with current model year emission standards. The requirement unintentionally necessitated use of a catalyst-equipped engine to replace the engine in an older model boat, even if the boat was not properly designed to accommodate or support a catalyst-equipped engine. The replacement engines amendment requires the installation of the cleanest available engine in a boat without unreasonable modifications when replacing an existing engine.

As described above, California's aftermarket exemption amendment corrects a cross-referencing error by clarifying that the aftermarket parts exemption applicable to other off-road categories also applies and is available to SD/I manufacturers. The replacement engine provisions amendment addresses a conflict in the previous regulations that unintentionally established infeasible requirements for some SD/I engine replacements. These amendments simply clarify and codify the intent of the Marine SI regulations EPA previously authorized. The modifications therefore do not change the basis for California's previous protectiveness determination, which EPA in its earlier authorization found not to be arbitrary or capricious. Based on the record associated with this request, EPA cannot find that the aftermarket exemption procedures or replacement engine amendments undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards.

EPA similarly finds that the aftermarket parts and replacement engines provisions do not affect consistency with section 209 of the Act. These two amendments do not broaden applicability of the Marine SI regulations to preempted vehicle or engine categories under sections 209(a) or 209(e)(1). The aftermarket parts amendment involves correction of a cross-referencing error in California's law that has no bearing on technological feasibility, cost, or test procedures. The replacement engines amendment also has no bearing on test procedures and indeed provides clarification to ensure that the replacement engine provisions under the Marine SI regulations do not present problems with technological feasibility or cost. In light of the information available to us we cannot find these two amendments to be inconsistent with section 202(a) of the Act.

Finally, EPA must evaluate whether California's aftermarket parts amendment or engine replacement amendment raise new issues affecting previously granted authorizations. These amendments do not change provisions of the previously authorized regulations, other than to correct administrative oversights in the regulations that unintentionally limited implementation flexibility for SD/I manufacturers. Therefore, we do not find that the amendments impose new concerns or affect the bases upon which EPA granted the previous authorization. EPA cannot find that CARB's aftermarket exemptions or engine replacement amendments raise new issues and consequently cannot deny CARB's request based on this criterion.

For all the reasons set forth above, EPA confirms that California's aftermarket exemptions and replacement engine amendments are within the scope of the existing authorization.

2. Amendments that add new compliance options, flexibility, or assistance

California requested within-the-scope confirmation for six amendments that either broaden availability of compliance assistance or provide flexibility by establishing new options for manufacturers to demonstrate compliance with the Marine SI regulations.

The Compliance Assistance for All Spark-Ignition Marine Engines Amendment (compliance assistance amendment) gives California's Executive Officer discretion to issue additional compliance assistance in cases of extreme hardship for which the engine discontinuation allowance may not be completely adequate. This assistance would not be automatically available. Rather, assistance would depend on an evaluation of whether the manufacturer seeking such assistance demonstrated that the cause of the hardship was beyond its control, that the manufacturer had already attempted to resolve the situation by exercising all existing regulatory provisions, and that the manufacturer had proposed an effective, implementable and enforceable plan to prevent any net increase in emissions.

The Optional Fifth Tier Added to Environmental Label Program Amendment (environmental label amendment) enables manufacturers to certify marine SI engines to a new, more stringent tier of voluntary emission standards and thereby become eligible for a new five-star emissions rating. The previously authorized regulations provided for a four-tier environmental label program.

The Optional Loaded Test Cycle for High Performance Engines Amendment (HPE test cycle amendment) establishes a new testing option for manufacturers certifying high performance (>373kW) SD/I engines. The new, optional HPE test cycle is similar to the steady-state test cycle that California's previously authorized Marine SI regulations designate for HPE certification testing. But instead of measuring emissions at a "no load" idle, the test is run at a

15-percent load (“loaded idle”). High performance engines typically operate at loaded idle since much of their operation occurs in “no-wake” zones near docks and swimming areas where the speed limit is five mile per hour. CARB states that the loaded idle operation is therefore more representative of HPE operation than “no load” idle operation.

The Optional Portable Emissions Measurement System (PEMS) for High Performance Engines Amendment (PEMS amendment) provides another new testing option for certification of certain high performance SD/I engines. This amendment allows manufacturers that produce no more than 75 engines per year nationally to use PEMS equipment to conduct certification testing. Eligible PEMS units must comply with the same specifications and verifications as the laboratory instrumentation described in the marine SI engine test procedures, but with added flexibility per California’s incorporation of the provisions for portable measurement systems set forth in federal regulations.³³

The Optional Assigned Deterioration Factors (DF) for High Performance Engines Amendment (assigned DF amendment) adds an option for manufacturers to use assigned DFs to demonstrate at the time of certification that an engine will meet the full useful life standards. Emissions deterioration over a HPE’s useful life is expected to be relatively small considering an engine’s 50-hour or 150-hour rebuild frequency. California states that the assignment of reasonable deterioration factors provides HPE manufacturers a cost effective and low-risk alternative to the traditional method of determining deterioration factors.

The Optional Engine Discontinuation Allowance for SD/I Engines Amendment (engine discontinuation allowance amendment) establishes an optional flexibility that allows manufacturers to certify one engine family per year to current emission certification levels if certifying one or more other SD/I engine families to more stringent standards to make up for the

³³ See 40 CFR 1065.901 through 1065.940.

emissions deficit. This provision addresses a compliance obstacle that arose after CARB adopted its 2005 marine regulations. Engine marinizers (manufacturers who modify existing automobile engines to operate in a marine environment) encountered the unanticipated discontinuation of engines by base engine suppliers and lacked the time necessary to develop reliable emission control systems for the engines that replace them. California states that the engine discontinuation allowance amendment offers a solution by providing marinizers a flexible alternative in limited situations when a currently compliant engine is no longer available, without a negative impact on emissions.

EPA again applied the three-prong test for a within-the-scope confirmation to the six amendments summarized above.

First, California asserts that the six amendments, and indeed all of the 2008 amendments, either reduce emissions or are emissions neutral. These six amendments in particular provide new, voluntary flexibilities meant only to enhance the marine SI industry's ability to comply with CARB's previously authorized regulations. Our analysis found no reason to conclude that the expanded compliance options would reduce the protectiveness of California's Marine SI regulations, or change the basis for California's previous protectiveness determination, which EPA in its earlier authorization found not to be arbitrary or capricious. EPA received no comment on this issue. Therefore, based on the record associated with this request, EPA cannot find that the compliance assistance, environmental label, HPE test cycle, PEMS, assigned DF, or engine discontinuation allowance amendments undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards,

Second, EPA must evaluate whether any of the six amendments render California's Marine SI regulations inconsistent with section 209 of the Act. Our review again finds that none of the six amendments broadens, or attempts to broaden, the applicability of the Marine SI regulations to cover either motor vehicles or nonroad engines expressly preempted under section 209(a) or section 209(e)(1). Similarly, the amendments, all voluntary and designed to provide flexibility, do not present technologically infeasible requirements relative to lead time or consistency with federal testing requirements.

For the foregoing reasons we find that the six amendments discussed in this section satisfy the second criterion for within-the-scope confirmation.

Finally, under the third prong of a within-the-scope analysis, EPA evaluates whether any of the six amendments constitutes a new issue affecting the prior authorization. These six amendments either promote the use of existing compliance flexibilities or create a new flexibility to assist manufacturers in achieving compliance with California's standards. They do not establish new requirements or obligations. As such, EPA cannot find that the amendments constitute any new issues that would affect our prior authorization of California's Marine SI regulations, and cannot deny CARB's request based on this third within-the-scope criterion.

For all the reasons set forth above, EPA confirms that California's compliance assistance, environmental label, HPE test cycle, PEMS, assigned DF, and engine discontinuation allowance amendments are within the scope of the existing authorization.

3. Amendments that modify or change emission standards or requirements

California also requested within-the-scope confirmation for amendments that change requirements for some marine onboard diagnostic systems and that adjust exhaust standards for some SD/I engines.

The Revised On-Board Diagnostics Marine (OBD-M) Requirements Amendment (OBD-M amendment) requires the onboard diagnostic system on all SD/I engines and boats to include a misfire monitor. Prior to the 2008 amendments, the misfire monitor requirement was conditional. The previously authorized regulations only required misfire monitoring when CARB or the certifying manufacturer determined that engine misfire would cause the catalyst to fail before the emissions durability period of the engine had elapsed. The OBD-M amendment also extends the compliance date to allow for the deployment of more sophisticated on-board computers and temporarily relaxes requirements for malfunction indicator light activation.

The Modification of Exhaust Standards for High Performance SD/I Engines Amendment (HPE exhaust standards amendment) relaxes California's total hydrocarbon and oxides of nitrogen (HC+NO_x) exhaust standard for 2009 and later model year high performance SD/I engines produced by small volume manufacturers.

California asserts that the OBD-M and the HPE exhaust standards amendments, like the other eight amendments presented for within-the-scope confirmation, satisfy all the criteria, including the third criterion, that the amendments do not raise any new issues affecting the prior authorization.

Beginning with the OBD-M amendment, California notes that the change from the previous conditional requirement to the mandate for misfire monitors does not represent a new requirement because all SD/I manufacturers, in practice, already voluntarily include misfire monitoring as part of their OBD-M systems. In 2006, when California adopted its original OBD-M requirements, industry believed that misfire monitors generally would not be necessary for SD/I engines certified to California's 5.0 gram per kilowatt-hour (g/kW-hr) non-methane

hydrocarbon plus nitrogen oxides (NMHC+NO_x) standard.³⁴ Rather, industry contended and CARB agreed that misfire would not affect catalyst durability because marine catalysts would need to be extraordinarily robust to meet that standard and remain durable in a water environment. However, industry has since learned that special catalysts are not necessary. Instead manufacturers are using conventional catalysts in California-certified SD/I engines. These catalysts are susceptible to damage from engine misfire and manufacturers therefore are subject to the conditional misfire monitor requirement established under the previously authorized Marine SI regulations.

California maintains that there would be no difference in converting the conditional misfire monitoring program into a mandate because all manufacturers providing information to California in actuality already include a misfire monitor in their OBD-M systems.

EPA appreciates California's argument that the practical impact of the OBD-M amendment is negligible, and perhaps even nonexistent. However, we do not agree with California's view that the change from a conditional requirement to a comprehensive mandatory requirement under the OBD-M amendment "does not mandate a new system or require appreciable hardware changes."³⁵ The possibility is arguably still present that the OBD-M amendment would require a manufacturer using a robust catalyst technology to include a misfire monitor in the OBD-M system, where previously such a requirement did not exist. If true, this would constitute a new requirement under the mandatory system that did not exist under the conditional system we previously authorized. EPA finds that the OBD-M amendment does indeed present a new issue and therefore cannot be confirmed as within the scope of the previous

³⁴ CARB amended its marine standards to reflect the total hydrocarbon species instead of the previous "non-methane" hydrocarbon species to recognize methane's role as a greenhouse gas. *See* discussion below, under full authorization analysis, and Authorization Support Document at pp. 8-9.

³⁵ *Id.*

authorization. Therefore EPA considers the OBD-M amendment under the full authorization criteria, as discussed below.

The HPE exhaust standards amendment, like several of the 2008 amendments, is designed to address obstacles that manufacturers faced in attempting to comply with California's Marine SI regulations. The HPE sector involves a relatively small number of manufacturers that cumulatively sell between 200-250 new engines in California each year. The previously authorized regulations allowed manufacturers to average standard performance and high performance engine family emission levels within their product line as a means to facilitate compliance. However, manufacturers encountered technical obstacles regarding the effective use of catalytic converters on high performance engines. In addition, a competitive disadvantage existed for small volume manufacturers that did not have requisite standard engines to generate offsets for their HPEs. The HPE exhaust standards amendment responds to these concerns by relaxing the model year 2009 and later HC+NO_x exhaust standard for small volume HPE manufacturers.

California states that any emissions shortfall resulting from the relaxation of standards by the HPE exhaust standards amendment will be offset by emissions reductions achieved through another provision in the 2008 amendments package. That provision establishes enhanced evaporative emissions control requirements for high performance SD/I engines. CARB requested full authorization for that amendment, as described in the following section of this document. California contends that the HPE exhaust standards amendment satisfies the criteria for within-the-scope confirmation because it does not impose new requirements and because it will not affect CARB's previous protectiveness determination, considering the emissions compensation achieved within the full set of 2008 amendments.

EPA agrees with CARB's interpretation that the HPE exhaust standards amendment does not impose any new, more stringent requirements, relative to the previously authorized regulations. EPA also agrees that the emissions impact of the relaxed HC+NO_x standard will be small and may in fact be nil overall, given the compensating effect of another provision that will reduce evaporative emissions from high performance SD/I engines. However CARB expressly states that the evaporative controls amendment was established to compensate for the shortfall in emission benefits from the change in exhaust standards. Because CARB links the two amendments, and because the amendment establishing the enhanced evaporative emission controls requires full authorization, EPA cannot consider the HPE exhaust standards amendment independently. Therefore, EPA views the HPE exhaust standards amendment as presenting a new issue that precludes a within-the-scope determination.

For the OBD-M and HPE exhaust emissions standards amendments, since the "new issue" prong of the within-the-scope criteria is not satisfied, EPA shall consider these amendments under the full authorization criteria, and will analyze them as such.³⁶

B. Full Authorization Analysis

California requested full authorization for five of its 2008 amendments, each of which is summarized below. As described in the background section of this document, the CAA directs EPA to grant authorization, after providing opportunity for public hearing, unless EPA finds that California's protectiveness determination is arbitrary and capricious, that California does not need state standards to meet compelling and extraordinary conditions, or that the California standards are inconsistent with federal standards. EPA requested but received no comment on whether the 2008 amendments satisfy those criteria.

³⁶ EPA cannot find that these amendments are within the scope of the previous authorization because they failed to satisfy the "new issue" criterion. We must therefore proceed with a full authorization analysis; there is no need to analyze whether the other two prongs of the within-the-scope analysis are met.

EPA analyzed the authorization request by evaluating each of the five amendments for which California requested full authorization against each of the three authorization criteria. As explained above, we also evaluated against full authorization criteria the two amendments that EPA could not confirm to be within the scope of the previous marine SI authorization. The following discussion briefly summarizes the amendments³⁷ and presents our analysis. The discussion combines and analyzes amendments together for brevity and clarity as appropriate.

1. Summary of Full Authorization Amendments

California has requested full authorization for five of its 2008 amendments. We summarize these amendments below. As described in the background section of this document, the CAA directs EPA to grant authorization, after providing opportunity for public comment, unless EPA finds that California's protectiveness determination is arbitrary and capricious, that California does not need state standards to meet compelling and extraordinary conditions, or that the California standards are inconsistent with federal standards. EPA requested but received no comment on whether the 2008 amendments satisfy those criteria.

The Revised Total Hydrocarbon plus Oxides of Nitrogen Standards Amendment (revised HC+NO_x standards amendment) changes California's hydrocarbon emission standard for all spark-ignition marine categories from a non-methane hydrocarbon (NMHC) standard to a total hydrocarbon standard. The previously authorized Marine SI regulations did not include the methane component of HC emissions in the standards because California, at the time, designed the regulation to control ozone, and methane does not contribute to ozone formation in the atmosphere. However, methane has been identified as a greenhouse gas that contributes to global warming. California therefore amended its regulations to acknowledge the state's now broader

³⁷ Summaries of the OBD-M and HPE exhaust standards amendments are provided in the within-the-scope amendments section of this document.

air pollution concerns and include the total hydrocarbon species in its marine SI emission standards. The amendment would also harmonize the form of California's marine SI standards with federal gasoline certification fuel standards.

The Enhanced Evaporative Emissions Controls for High Performance SD/I Engines Amendment (evaporative emissions controls amendment) calls for boats using model year 2009 and later SD/I engines to incorporate enhanced evaporative emissions controls, including evaporative canisters and low-permeation fuel tanks and hoses. California states that this amendment was intended to "compensate" for the shortfall in emission benefits from the change in exhaust standards for high performance SD/I engines produced by small volume manufacturers, and to keep pace with EPA's evaporative emissions regulations published on May 18, 2007.³⁸ The evaporative emissions controls harmonize California evaporative emissions standards with the federal standards.

The Not-to-Exceed (NTE) Limits Amendment (NTE limits amendment) harmonizes California NTE limits for outboard motors/personal watercraft (OB/PWC) and SD/I engines less than or equal to 373 kW with federal NTE requirements for the same engine categories. The NTE requirements are intended to ensure emissions control in modes of engine operation that are not fully represented by the certification test cycle.

The Revised Jet Boat³⁹ Engine Standards Amendment (jet boat standards amendment) enhances alignment between California and federal definitions for SD/I engines and jet boats, and requires manufacturers that were certifying jet boat engines to California's OB/PWC standards to instead certify them to the more stringent SD/I standards. The 2008 amendments include several provisions intended to help facilitate the transition to the SD/I standards. These

³⁸ 72 FR 28098, Control of Emissions from Nonroad Spark-Ignition Engines and Equipment.

³⁹ CCR Section 2441(a)(32), "Jet Boat" means a vessel that uses an installed internal combustion engine powering a water jet pump as its primary source of propulsion and is designed with open area for carrying passengers.

include enabling jet boat engine families previously certified to the OB/PWC standards or certified in a combined jet boat OB/PWC family to be certified to the OB/PWC standards until 2012 and establishing a transition period between 2010 and 2012 during which certain offsets and averaging may be used to comply with HC+NO_x standards.

The New Carbon Monoxide Emission Standards Amendment (CO standards amendment) California adopted as part of the 2008 package applies to OB/PWC and SD/I engines. California adopted the standards, which essentially capped CO emissions at currently measured levels, to reduce CO inhalation risk for recreational boaters. The amended California CO standards are similar in stringency to federal standards but differ slightly in program design.

2. California's Protectiveness Determination

The first criterion EPA analyzes for full authorization is whether California's protectiveness determination (that its standards, including those changed by the 2008 amendments - the OBD-M requirement, HPE exhaust standards, revised HC+ NO_x standards, evaporative emissions controls, NTE limits, jet boat standards, and CO standards - are, in the aggregate, at least as protective of public health and welfare as applicable federal standards) is arbitrary and capricious.

In its initial action to adopt marine SI emission regulations in 1998, CARB determined that the Marine SI regulations were in the aggregate at least as protective of public health and welfare as the applicable federal regulations.⁴⁰ In granting California authorization for the regulation, EPA affirmed that this determination was not arbitrary or capricious.⁴¹ CARB has reiterated its protectiveness determination with regard to the 2008 amendments so EPA now

⁴⁰ See CARB Resolution 98-63, EPA-HQ-OAR-2013-0024-0014.

⁴¹ 72 FR14546 (March 28, 2007).

evaluates that determination in light of the amended marine SI program and current federal standards.⁴²

As described above, CARB states that the 2008 amendments are either emissions neutral or increase the emissions stringency of California's Marine SI regulations. Specifically, California states that the revised HC+NO_x standards, NTE limits and revised jet boat engine standards harmonize with federal standards while the CO standards and HPE exhaust standards are either of equivalent stringency or more stringent than the federal requirements. The HPE exhaust standards amendment does relax California's previous requirement somewhat, but only for small volume manufacturers, and the emissions increase due to this modification is offset by requirements within the 2008 amendments for enhanced evaporative emission controls on the same high-performance SD/I engine sector. We received no comment challenging California's marine SI standards as less stringent than applicable federal standards or refuting California's protectiveness determination. Given the lack of any evidence to the contrary, we cannot find that California's protectiveness determination regarding these amendments is arbitrary or capricious.

⁴² Authorization Support Document at 13.

California's OBD-M amendment requiring misfire monitoring for SD/I engines was intended to adjust and upgrade the OBD-M requirement that EPA authorized in 2007. While EPA finds that the OBD-M amendment is inappropriate for within-the-scope treatment, the modification from a conditional to a mandatory requirement increases the program's stringency, which would favor California's finding of protectiveness. There is no federal requirement for a misfire monitoring system for marine OBD systems, which lends support to California's determination that its standards are as protective, if not more so, than the federal standard. Therefore, as with the amended emission standards within the 2008 amendments, we cannot find that California's protectiveness determination regarding the OBD-M amendment is arbitrary or capricious.

3. California's Compelling and Extraordinary Conditions

California has asserted its longstanding position that the State continues to need its own nonroad engine program to meet serious air pollution problems.⁴³ The relevant inquiry under section 209(e)(2)(A)(ii) is whether California needs its own emission control program to meet compelling and extraordinary conditions, not whether any given standard is necessary to meet such conditions.⁴⁴ In a 2009 waiver action, EPA examined the language of section 209(b)(1)(B) (which is essentially identical to the language in section 209(e)(2)(A)(ii)), and reiterated its longstanding traditional interpretation and that the better approach for analyzing the need for "such State standards" to meet "compelling and extraordinary conditions" is to review California's need for its program as a whole, for the class or category of vehicles being

⁴³ See Authorization Support Document at p. 15, "In adopting Resolution 08-36 (Reference 5), the Board also confirmed CARB's longstanding position that California continues to need its own nonroad engine program to meet serious air pollution problems."

⁴⁴ Final 209(e) Rule, 59 FR at 36982. The Administrator has recognized that even if such a standard by standard test were applied to California, it "would not be applicable to its fullest stringency due to the degree of discretion given to California in dealing with its mobile source pollution problems." (41 FR 44209, 44213, (October 7, 1976); 49 FR 18887, 18892 (May 3, 1984).)

regulated, as opposed to its need for individual standards.⁴⁵ We have previously and consistently recognized that California meets the compelling and extraordinary criterion when granting waivers for motor vehicles under section 209(b) and authorizations for California's nonroad regulations under section 209(e) of the Act.

CARB's entire marine engine program is an important part of efforts to improve California's air quality through reductions of HC and NOx emissions. Because of California's unique and severe air quality problems, the state continues to need more stringent standards to meet its air quality goals and satisfy its State Implementation Plan obligations. CARB's regulation of SD/I marine engines stems from its determination that these sources are significant contributors to ozone-forming emissions in California. The 2008 amendments are intended to enhance the program by clarifying and updating the regulations to align with other state and federal standards, and by increasing compliance flexibility. The Marine SI regulations also provide selective enforcement auditing, in-use compliance testing, consumer labeling to identify emissions performance relative to other marine SI engines, and a defects warranty program to protect consumers against poor quality products and to ensure that engines continue to perform as designed throughout their entire useful lives. California's Marine SI regulations as a whole address California's continuing struggles with air quality.

We received no contrary evidence or comments contesting California's longstanding determination that its marine SI engine program is needed to address the state's compelling and extraordinary conditions, nor did we receive any suggestion that the program is not still necessary. Therefore, based on the record of this request and absence of comments to the

⁴⁵ See EPA's 2009 GHG Waiver Decision wherein EPA rejected the suggested interpretation of section 209(b)(1)(B) as requiring a review of the specific need for California's new motor vehicle greenhouse gas emission standards as opposed to the traditional interpretation (need for the program as a whole) applied to local or regional air pollution problems.

contrary, EPA cannot find that California does not continue to need such state standards, including the 2008 amendments, to address the “compelling and extraordinary conditions” underlying the state’s air pollution problems.

4. Consistency with section 209 of the Act

The third and final prong of our full authorization review addresses consistency with section 209 of the Act, which, as discussed above, requires evaluation of consistency with sections 209(a), 209(e)(1), and 209(b)(1)(C). First, to be consistent with section 209(a), the amendments must not apply to new motor vehicles or motor vehicle engines. Second, to be consistent with section 209(e)(1) of the Act, the regulations must not attempt to regulate those vehicles and engines permanently preempted from state regulation by section 209(e)(1), including farm and construction equipment and engines, vehicles and engines below 175 horsepower, and new locomotives or locomotive engines. None of the boats or engines covered by California’s Marine SI regulations fall in those categories and we received no evidence to the contrary. We therefore find the 2008 amendments are consistent with sections 209(a) and 209(e)(1).

Third, to be consistent with section 209(b)(1)(c), there must be adequate lead time to permit technological development for compliance with the amendment, and the state test procedures must not be made inconsistent with federal test procedures. The 2008 amendments for which California has requested authorization do not require development of new technologies, thus there is no consistency issue presented with regard to lead time. Furthermore, aside from the OBD-M amendment, California designed the provisions for which full authorization is being evaluated to harmonize with federal standards. There is no inconsistency with federal test procedures. Indeed, one of California’s goals in amending the marine

regulations was to address any potential conflict with the federal regulations that may have hindered or unnecessarily complicated compliance, including duplicative testing.

The misfire monitoring requirement for OBD-M may have created an issue with lead time since the 2008 amendments modified the conditional requirement into a mandatory requirement for SD/I manufacturers. However, as California has asserted, all manufacturers that have submitted reports to California already include misfire monitoring in their OBD-M systems. We received no comment or evidence contesting California's position that the misfire monitoring system, or any other 2008 amendment, satisfies the consistency criterion under section 209(b)(1)(c).

We therefore find that each of the 2008 amendments that we analyzed under the full authorization criteria is consistent with section 209 of the Act.

Having found that the 2008 amendments satisfy each of the criteria for full authorization, and having received no contrary evidence to contradict this finding, we cannot deny authorization of the 2008 amendments.

III. Decision

The Administrator has delegated the authority to grant California section 209(e) authorizations to the Assistant Administrator for Air and Radiation. After evaluating CARB's amendments to its Marine SI regulations described above, EPA is taking the following actions. First, EPA is granting an authorization for the following amendments: Revised Total Hydrocarbon Emission Standards; Enhanced Evaporative Emissions Controls for High Performance SD/I Engines; Modification of Exhaust Standards for High Performance SD/I Engines; Not to Exceed Limits; Revised Jet Boat Engine Standards; New Carbon Monoxide Emissions Standards; Revised On-Board Diagnostic Marine Requirements.

Second, EPA confirms that the following 2008 amendments are within the scope of the previous EPA authorizations: Aftermarket Exemption Procedures Clarification; Optional Fifth Tier Added to Environmental Label Program; Optional Loaded Test Cycle for High Performance Engines; Optional Portable Measurement Systems for High Performance Engines; Optional Assigned Deterioration Factors for High Performance Engines; Optional Engine Discontinuation Allowance for SD/I Engines; Compliance Assistance for All Spark-Ignition Marine Engines; Replacement Engine Provisions.⁴⁶

This decision will affect persons in California and those manufacturers and/or owners/operators nationwide who must comply with California's requirements. In addition, because other states may adopt California's standards for which a section 209(e)(2)(A) authorization has been granted if certain criteria are met, this decision would also affect those states and those persons in such states. *See* CAA section 209(e)(2)(B). For these reasons, EPA determines and finds that this is a final action of national applicability, and also a final action of nationwide scope or effect for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

IV. Statutory and Executive Order Reviews

⁴⁶ We believe these amendments satisfy the criteria for a within-the-scope confirmation. However, we believe these eight amendments would also merit a full authorization if reviewed under that analysis.

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: April 29, 2015.

Janet G. McCabe
Acting Assistant Administrator
Office of Air and Radiation.

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